

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/13/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-016749

FILED: _____

TIMOTHY GALLIA, et al.

JENNIFER W SHICK

v.

JAYSON BREWSTER

RICHARD M J BUSHONG

PHX JUSTICE CT-WEST
REMAND DESK CV-CCC
JAYSON BREWSTER
9820 N TURQUOISE
PHOENIX AZ 85004

MINUTE ENTRY

This Court has jurisdiction of this Civil appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A). This case has been under advisement and the Court has considered and reviewed the record of the proceedings from the West Phoenix Justice Court and the memoranda submitted by counsel.

This matter arises out of the sale of Appellee's house to Appellants. In conjunction with this sale, Appellants requested Appellee to do some remodeling to the home in exchange for an hourly fee and also asked to move into the home prior to the close of escrow on a month-to-month rental basis. Appellee performed most of the remodeling and allowed Appellants to move into the home. Appellee removed most of his belongings before Appellants moved in, but left several items behind. Appellants

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sued Appellee for breach of contract, alleging the remodeling was not completed properly. Appellee countersued, stating that Appellants had refused to allow him to retrieve his remaining personal belongings. The trial court found for Appellee on all charges. In its preliminary decision memorandum, the trial court requested that Appellee provide additional documentation on the damages calculation, which apparently Appellee did. The trial court then awarded damages to Appellee in its memorandum of decision.

Appellants allege the trial court erred in awarding damages to Appellee. Appellants claim the trial judge made her decision regarding the amount of damages using information she requested Appellee to submit after the trial of this matter. Appellants state that there was no testimony regarding damages at trial and that the trial court may not admit evidence of damages without offering the opposing party the opportunity to refute such evidence. Appellants allege that the trial court should have considered the brand name, age, and condition of each item of property included in the damages calculation.

The trial was held on May 25, 2001 and the trial court issued its minute entry ruling on July 12, 2001 requesting more evidence:

On May 25, 2001 trial was held on the above listed case and taken under advisement. A decision was made May 30, 2001, Defendant found Not Guilty for Judgment (sic). The court needs receipts in amounts of articles not returned to determine amount, if any, on Counterclaim.

Done this 12th day of July, 2001 signed
Judge Rachel T. Carrillo.¹

¹ Order of July 12, 2001, record on appeal from West Phoenix Justice Court.
Docket Code 019

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The record does not reflect that a decision was made May 30, 2001. Curiously, the trial judge uses the phrase "Not Guilty for Judgment" which applies to criminal cases. This Court assumes that the trial judge meant that it found in favor of the Defendant on Plaintiff's claim, though the trial judge used imprecise and incorrect legal terminology. Clearly, though the trial had been completed, the trial judge requested additional information and evidence to determine damages on the counterclaim! In the judgment of August 16, 2001, Judge Carrillo entered judgment in favor of Appellee/Defendant Jason Brewster for \$7,824.00. Nothing in the trial court's file indicates what evidence was considered by the judge, whether it was submitted to the judge ex parte by Appellee/Defendant, or that the trial court gave Appellants the opportunity to object or to rebutt such "supplemental evidence."

All parties and persons who appear in Arizona courts have the right to due process as guaranteed by the Arizona Constitution, Article II, Section 4. That right includes the right to confront, cross-examine, and present evidence in one's own behalf. The submission of "supplemental evidence" after a trial has been completed without offering the opportunity for cross-examination and additional evidence to the party against whom the evidence is offered violates basic concepts of a fair trial. When an appellate court finds a denial of an essential component of due process, this denial constitutes fundamental error.²

IT IS THEREFORE ORDERED reversing and vacating the judgment of the West Phoenix Justice Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the West Phoenix Justice Court for a new trial in conformity with this opinion.

² State v. Flowers, 159 Ariz. 469, 768 P.2d 201 (App. 1989).
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Appellee has requested attorney's fees and costs. Good
cause not appearing in that request,

IT IS ORDERED denying the same.

Pursuant to Appellant's Motion to Withdraw,

IT IS ORDERED granting Appellant's Motion to Withdraw as
counsel of record.

Formal written Order is signed by the Court on May 20,
2002.